Supreme Court, U.S.
FILED

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No._____

IN THE

Supreme Court of the United States

Gregory T. Christian,
Petitioner,

v.

United States Internal Revenue Service,
Respondent.

On Petition for Writ of Certiorari to
the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Gregory T. Christian
Petitioner
15 Gallivan St.
Greenville, SC 29609
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March 22, 2001

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12 pp

QUESTION PRESENTED

Whether a non-binding line of credit extended under a margin stock account constitutes property or right to property properly reachable by IRS levy as set forth in 28 U.S.C. § 6331.

OPINIONS BELOW

The opinion and order of the Court of Appeals for the Eleventh Circuit is set forth in the Appendix hereto as App. A. The order and discussion of the United States District Court for the Northern District of Georgia, Atlanta Division is set forth in the Appendix hereto as App. B. The ruling of the Court of Appeals on petitioner's petition for rehearing is set forth in the Appendix hereto as App. C.

JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on August 30, 2000. The Court of Appeals denied a timely petition for rehearing on December 26, 2000.

The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS

U.S.C. 28 § 6331:Levy and Distraint

(a) Authority of Secretary

If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax.

(b) Seizure and sale of property

The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize

and sell such property or rights to property (whether real or personal, tangible or intangible).

STATEMENT OF THE CASE

A. Statement of Facts

On February 27, 1998 respondent IRS took in satisfaction of levy $3,845.17 drawn from the funds of appellant's brokerage firm and subsequently debited against a non-binding line of credit extended petitioner by his brokerage firm under a margin stock account agreement. On February 16, 1999 Petitioner filed suit for recovery in federal district court in Atlanta, claiming the money was wrongfully taken because money he could borrow at a lender's discretion did not constitute "property or rights to property" specified in U.S.C. 28 § 6331 as properly reachable by IRS levy.

B. Proceedings Below

The district court below granted the government's motion for summary judgment without hearing, holding that the IRS had properly taken by levy petitioner's "right to property" as contemplated by U.S.C. 28 § 6331 apparently because the money was taken from funds which petitioner might borrow from (Kane v. Capital guardian trust Co., 154 F.3d 1218, 1221)(10th Cir. 1998). Upon review, the 11th Circuit Court of Appeals affirmed *per curiam* without hearing, also citing *Kane* and agreeing with the position of the government and district court. Petitioner's petition for rehearing was denied without comment.

ARGUMENT

Petitioner notes at the outset that neither the government nor the courts below have cited any direct precedent for this case, nor does there appear to be any. The lower courts insist that the IRS received in satisfaction of levy money to which

petitioner had a right and presumably in some fashion possessed, and petitioner has observed in vain that what in fact occurred was that in order to satisfy an IRS levy petitioner's brokerage firm gave the IRS money out of that firm's funds and then debited the amount against a line of credit which the firm had at its discretion extended petitioner, a sequence of transactions borne out by every pertinent document submitted by both parties and quite outside the bounds of U.S.C. 28 § 6331. Petitioner has maintained throughout that petitioner had no "right to property" concerning money drawn at the discretion of his brokerage firm from that firm's funds and then debited against a line of credit extended petitioner at that firm's discretion. Apart from the less than subtle distinction between debt and equity, had petitioner attempted to borrow money under the line of credit extended him and had petitioner's brokerage firm declined, petitioner would have had no legal recourse whatsoever to compel consummation of the contemplated loan. Thus regardless of how strikingly liberal might be the lower court's preferred definition of one's "property" or how deceptively innocuous might be the dash in front of an account balance it is nonetheless fundamentally erroneous to caste as a legal "right to property" a debt instrument which carried with it no legally enforceable right whatsoever to execution, and indeed to classify a non-binding line of credit as a "right to property" would require creation of a novel species of legal right the supposed holder of which would have not the slightest legal standing to have enforced. The absurdity of this classification of convenience is apparent in the district court's use of the phrase "check-writing *privilege*" (actually borrowing privilege) in reference to a mutually discretionary financial capacity subsequently held by the court to be petitioner's "property *right*".

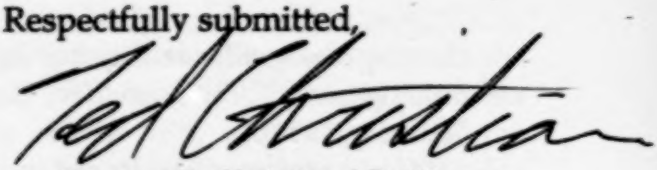
Petitioner further notes that the specific rationale by which the district court granted the government's motion for summary judgment and apparently by which the

appellate court subsequently affirmed was that the petitioner had failed to establish that he did not have a "right to withdraw" money which he had "check-writing privileges on", the district court holding that petitioner's "unsupported statement" of his brokerage firm's lack of contractual obligation in the matter failed to establish petitioner's claim of what his account agreement did not say, and a copy of petitioner's account agreement submitted to the court was apparently of such volume that the court was unable to firmly establish precisely what was not in it. Nevertheless, as the district court's judgment in this case was summary in nature and the appellate court likewise affirmed without hearing, one can thus only surmise that both courts must perforce have viewed the facts in the headlights most favorable to the petitioner, though it is a matter of speculation whether the ignorance thus evinced would be most charitably held genuine or feigned.

CONCLUSION

Petitioner would in all sincerity be the first to admit how unrealistic is the standard to which he would hold those in our government, though it is to be hoped this standard is not so very much higher than such to which he would himself adhere were he ever so occupied, and it is in this light that he hopes the court will view with forbearance his observation that from his vantage point in this matter the federal judiciary appear to be nothing more than a bunch of shameless government lackeys, mere adjuncts to the tax collection process intent only upon lending a patina of legitimacy to whatever abuses their fellow employees can by threat or force commit, given to a convenient capacity for confusion of a sort by which this same august adjudicatory body managed for many years to equate standing in the back of the bus with riding in the front. Petitioner writes this in light of what appears to him the near certainty that as far from equitable relief as a derisive reference to the federal judiciary may be it is nonetheless as close to justice as he is likely to get for his three hundred dollars, particularly as he has yet to so much as stand before a judge in this matter, and it is in this spirit that he hopes the court will view with indulgence words which might otherwise seem contemptuous and ill warranted. It seems in any event apparent that such contempt in which the IRS holds the law is not entirely unfounded, indeed is no more than commensurate with the tolerance afforded, and if in fact one cannot beat them it might well be argued foolish not to join them.

Respectfully submitted,



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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 00-10913
D.C. Docket 99-00441-CV-WBH-1
Gregory T. Christian, Plaintiff-Appellant
v.
United States Internal Revenue Service, Defendant-Appellee
Appeal from the United States District Court
for the Northern District of Georgia
(August 30, 2000)

Before Edmondson, Cox, and Hull, circuit judges.

PER CURIAM:

Christian argues that no case cited by the Government or the district court supports the proposition that the IRS' right to levy upon "property and rights to property" in order to collect delinquent taxes includes the right to seize a debt instrument from a taxpayer. He argues that the district court misconstrued the line of credit that Brown & Company extended him for the purchase of stocks on margin, and that when he wrote checks on his margin account he was actually borrowing money, not "drawing upon his own property." Finally, Christian notes that it does not matter that, as the Government argues, he may have a right to liquidate his open stock positions and withdraw the resulting funds, because this never actually happened. He also notes that the securities and cash in his brokerage account were not interchangeable entities and that one could not be "drawn on" at the expense of the other.

We review a grant of summary judgment de novo, viewing the evidence "in the light most favorable to the moving party." *Schoenfeld v. Babbitt*, 168 F.3d 1257, 1264 (11th Cir. 1999).

Upon review of the record in the district court, the briefs of the parties, and the other pertinent documents, we find no reversible error. We conclude that the district court did not err in finding that Christian had a "right to property" in

the open securities positions in his brokerage account. See *Kane v. Capital guardian trust Co.,* 145 F.3d 1218, 1223 (10th Cir. 1998). Thus he is not entitled to a refund of the amount that the IRS levied from that account in satisfaction of his delinquent federal income tax.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In Re:
Gregory T. Christian, Plaintiff
v.
United States Internal Revenue Service, Defendant
CIVIL ACTION FILE
NO. 1:99-CV-441-WBH (December 13, 1999)

ORDER

Proceeding pro se, plaintiff Gregory T. Christian filed this action on February 16, 1999 seeking a refund of $3,845.14 that he contends the Internal Revenue Service ("IRS") unlawfully collected from his brokerage account to satisfy an alleged tax debt. Before the Court is the government's motion for summary judgment [11-1]. For the reasons stated below, the Court GRANTS the motion.

DISCUSSION

Keeping in mind that the court must view the facts in the light most favorable to the plaintiff because the case is before the court on defendant's motion for sum2mary judgment, Hairston v. Gainesville Sun Publishing Co., 9 F.3d 913,918 (11th Cir. 1993), the scenario played out as follows: For the tax years 1992, 1994, and 1995 plaintiff filed tax returns but, according to the IRS, did not pay all the amounts due thereon. In an effort to collect plaintiff's tax liability, the IRS levied upon plaintiff's account at Brown & Company in January 1998 for $3,845.14. At the time Brown & Company received the IRS levy, plaintiff's stock portfolio

had an approximate value of $154,000 and plaintiff had check writing privileges to withdraw approximately $77,000 of that amount. Brown & Company satisfied the IRS levy by debiting plaintiff's account $3,845.17 rather than liquidating securities or turning over stock certificates to the IRS.

Through this action, plaintiff contends that the IRS should refund him the $3,845.17 because the funds withdrawn from his Brown & Company account were not an asset of his, but instead were merely an unauthorized loan to him not subject to an IRS levy. The government seeks summary judgment contending that, because the funds collected from plaintiff's Brown & Company account were accessible to him pursuant to his check writing privileges with Brown & Company, they were also accessible to the IRS in its efforts to collect delinquent taxes. The Court agrees.

Under Federal Rule of Civil Procedure 56, a court shall grant a motion for summary judgment if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P.56(c). Where the nonmoving party bears the burden of proof at trial, the moving party must demonstrate to the Court that "there is an absence of evidence to support the nonmoving party's case," Celotex v. Catrett, 4777 U.S. 317, 325, 106 S.Ct.2548, 91 L.Ed.2d 265 (1986), or must put forth affirmative evidence negating an element of the nonmoving party's case, Fitzpatrick v. Atlanta, 2 F.3d 1112, 1116 (11th Cir. 1993). It is then the responsibility of the nonmoving party, by revealing evidence outside the pleadings, to show that evidence supporting its case does exist or that the element sought to be negated remains a genuine issue of material fact to be tried. Id.

Essentially, this required the nonmoving party to come forward with evidence sufficient to withstand a directed verdict on this issue at the trial. Id. at 1116-17. The nonmoving party is not required to carry its burden of proof at the summary judgment stage. In analyzing the case, the Court views the facts in the light most favorable to the

nonmoving party and makes all factual inferences in favor of that party. Hairston v. Gainesville Sun Publishing Co., 9 F.3d 913,918 (11th Cir. 1993). "The court must avoid weighing conflicting evidence or making credibility determinations." Id. at 919. "Where a reasonable fact finder may "draw more than one inference from the facts, and that inference creates a genuine issue of material fact, then the court should refuse to grant summary judgment." Id. (quoting Barfield v. Brierton, 883 F.2d 923, 933-34 (11th Cir. 1989)).

Pursuant to 26 U.S.C. § 6321, "[i]f any person liable to pay any tax neglects or refuses to pay the same after demand, the amount ... shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person" 26 U.S.C. § 6321. "Upon service of the notice of levy, the IRS steps into the shoes of the taxpayer and acquires whatever rights to the property the taxpayer possessed." Kane v. Capital guardian trust Co., 154 F.3d 1218, 1221 (10th Cir. 1998) quoting United states v. Bell Credit Union, 860 F.2d 365, 369 (10th Cir. 1988). This statutory language "is broad and reveals on its face that Congress meant to reach every interest in property that a taxpayer might have." United States v. National Bank of Commerce, 472 U.S.713, 720 105 S.Ct. 2919, 2924, 86 L.Ed.2d 565 (1985). "Stronger language could hardly have been selected to reveal a purpose to assure the collection of taxes." Id., quoting Glass City Bank v. United States, 326 U.S. 265, 267, 66 S.Ct. 108, 110, 90 L.Ed. 56 (1945).

Importantly, the Supreme Court in National Bank of Commerce noted that, in keeping with section 6321's broad purpose, where a taxpayer has a right to withdraw funds from an account, "it is inconceivable that Congress ... intended to prohibit the government from levying on [such an account] which is plainly accessible to the delinquent taxpayer-depositor." Id., 472 U.S. at 725-26, 105 S.Ct. 2927. "Common sense dictates that a right to withdraw qualifies as a right to property..." Id. This controls the disposition of

the present case. Although plaintiff appears to be contending that he did not have a right to withdraw the approximately $77,000 that he had check-writing privileges on, he has failed to create a genuine issue of material fact as to this issue. He offers nothing more than an unsupported statement that he did not have a right to withdraw these funds. This is insufficient as the record, viewed in the light most favorable to the plaintiff, shows that when plaintiff wrote the checks on his account (or when Brown & Company wrote checks on his behalf), he was drawing on his own property – the value of his own portfolio with Brown & Company. See Midwestern Waffles, Inc. v. Waffle House, Inc., 734 F.2d 705, 714 (11th Cir. 1984) (Unsupported statements are insufficient to create a genuine issue of material fact). Accordingly, the Court finds that the IRS, stepping into plaintiff's shoes, acquired the same rights to these funds as plaintiff had. As plaintiff had rights to $3,845.14, so did the IRS. The Court finds that the IRS is entitled to retain the funds. The government's motion for summary judgment is GRANTED.

Willis B. Hunt, Jr.

Judge, United States District Court

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 00-10913-HH

Gregory T. Christian, Plaintiff-Appellant

v.

United States Internal Revenue Service, Defendant-Appellee

On Appeal from the United States District Court

for the Northern District of Georgia

Before Edmondson, Cox, and Hull, circuit judges.

PER CURIAM:

The petition(s) for rehearing filed by Gregory T. Christian is DENIED.

(December 26, 2000)